

*Oral Testimony of
Deputy Under Secretary of Defense
(Industrial Policy)
on the
Reauthorization of the Defense Production Act
before the
Subcommittee on Domestic and International Monetary Policy,
Trade and Technology
of the
House Committee on Financial Services
March 19, 2003*

Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to share with you Department of Defense (DoD) views regarding the Defense Production Act (DPA). As Dr. Segal indicated, this act provides statutory authorities that are vital for DoD, both in time of contingency or conflict as well as during peace in helping to obtain the goods and services needed to promote the national defense.

With your permission, I would like to summarize the testimony I have submitted for the record. Dr. Segal talked about Title III. My testimony

today focuses on Title I of the Defense Production Act, and I want to briefly mention Title VII of the Act which also is very important to the Department of Defense. As you know, Defense Production Act Titles 2, 4, 5, and 6 have been repealed. I particularly want to describe for you why Title I authority is important and how we are using it today.

Title I, which addresses priorities and allocations, provides the President the authority to require preferential performance on contracts and orders as necessary or appropriate to promote the national defense. These authorities are important in peacetime, and vital in the event of conflict.

During peacetime, Title I authorities are important in setting priorities among defense programs that are competing for scarce resources and industrial production of parts and subassemblies. These authorities are implemented through the Defense Priorities and Allocations System (DPAS) and applied via contract clauses. The clauses are like insurance, present in all defense system contracts, subcontracts, and orders, but actually executed only when absolutely necessary. In peacetime, delayed industrial supplies increase costs of weapons systems and affect our

readiness. DPAS serves as an important tool to prioritize deliveries and minimize cost and schedule delays for the Department's orders.

Thirty-one percent of our 120 DPAS cases since 1995 supported peacetime requirements. Such support has included prioritizing deliveries of components for weapon systems to minimize delayed deliveries and readiness impacts, rating the State Department's embassy security protection upgrade program worldwide, and rating selected friendly nation defense contracts with U.S. suppliers that promote U.S. national defense.

Sixty-nine percent of the overall 120 cases since 1995 have supported U.S. and coalition needs during conflicts in Bosnia, Kosovo, Operation Enduring Freedom, and the Global War on Terrorism.

During times of conflict, DPAS is vital, indeed indispensable. DPAS gives the Department of Defense the necessary power and flexibility to address critical warfighter needs involving the industrial base effectively and expeditiously. The role of DPAS to increase interoperability and assist allies is also very important.

Recent DoD/DoC actions to use DPAS authorities to support Operation Enduring Freedom and the Global War on Terrorism have included: components for precision guided munitions, Global Positioning System receivers and navigational processors, unmanned aerial vehicle (UAV) sensors, and manpack and search and rescue radios.

Two specific cases illustrate the absolutely necessary power that DPAS provides:

Predator UAVs armed with Hellfire missiles were used for the first time in Afghanistan. They include an upgraded sensor package, the Multi-Spectral Targeting System. The contractor's original delivery date for three systems was this month, March 2003. Using DPAS, we jumped this order to the head of the production queue and the contractor was able to deliver three systems in December 2001, 18 months earlier than originally promised. We all are aware of the dramatic impact manned Predators had in waging war in Afghanistan. Since that time, we've used DPAS to accelerate 40 additional Multi-Spectral Targeting Systems.

Also in support of Operation Enduring Freedom, the U.K. MoD needed ARC 210 Satellite Communications Equipment to ensure secure satellite communications capabilities among U.S. and U.K. aircraft operating in and around Afghanistan. The U.K. requirements were critical to the warfighting effort. DPAS was used to give the U.K. order an industrial priority rating and it was moved ahead of some U.S. orders that were not for deployed/deploying forces. The U.K. received the equipment six months in advance of the initial delivery date quoted by the manufacturer – permitting vital secure communications among allied forces in theater.

I'd like to conclude my remarks on Title I of the DPA by noting that our warfighters are the real DPAS beneficiaries. Limiting our authority to apply these provisions to our contracts – whether by allowing the basic authorities to lapse or by enacting an amendment limiting our ability to direct deliveries from any and all U.S. contractors when required to meet critical national defense requirements – has the potential to put their lives at risk.

Turning now to Title VII, I want to briefly express support for these authorities, also very important to the Department of Defense. Title VII contains miscellaneous provisions, including enforcement mechanisms, which help protect the nation's security. For example, section 707 provides that no person shall be held liable for damages or penalties for any act resulting from compliance with rules, regulations, or orders issued under the Defense Production Act. This provision is necessary to protect suppliers from breach of contract claims when commercial contracts are displaced in the interest of national security. This provision should be permanently authorized in order to protect contractors during periods when the Defense Production Act has lapsed (as has happened temporarily). As an example, the Civil Reserve Air Fleet (CRAF) was activated in February 2003 for the second time in its 50-year history. Upon activation, 47 passenger aircraft were brought under the exclusive control of the Department of Defense until released. Both scheduled carriers and charter carriers may have to invoke section 707 to defend against breach of contract actions involving their commercial business. During Operation Desert Shield/Desert Storm, when CRAF was activated previously, the Defense Production Act expired, leaving carriers with no legal protection to defend against breach of commercial contracts. The 102nd Congress

retroactively extended it, but DoD believes that Section 707 should be permanently authorized, to remove uncertainty.

Section 721 represents another example of important Title VII authorities. Section 721 allows the President to suspend or prohibit a foreign acquisition of a U.S. firm when that transaction would present a credible threat to the national security of the U.S. and remedies to eliminate that threat are not available under other statutes. This authority is increasingly important in today's globalized industrial environment.

In closing, I'd like to reaffirm that DPA authorities are a critical tool in the Department of Defense's arsenal. It would be very difficult for the Department of Defense to meet its national security responsibilities without that tool. Since it was originally enacted in 1950, we have used Defense Production Act authorities to promote our nation's security time and time again, particularly during times of conflict. Given the challenges we face today and the uncertain duration of our global war on terrorism, we support reauthorization of the Defense Production Act through September 30, 2008. This would help to remove the uncertainty associated with short duration authorizations.